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ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

May 24, 2012

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Jackson:

The Committee on Energy and Commerce is investigating the Environmental Protection Agency's (EPA or "Agency") administration of the Renewable Fuel Standards (RFS) Program. On February 3, 2012, Committee Chairman Fred Upton and Energy and Power Subcommittee Chairman Ed Whitfield wrote EPA seeking information relating to concerns about EPA's handling of fraud in the program.

In the system developed and administered by EPA to track compliance with RFS, the agency relies on Renewable Identification Numbers (RINs), created by EPA-registered renewable fuels producers. RINs serve as credits for specific amounts of renewable fuels produced and blended into the nation's fuel supply, consistent with statutory requirements. RINs can be traded, much like currency, to allow for producers and importers of gasoline and diesel to meet RFS blending obligations. Unfortunately, the production of and trade in fraudulent or invalid RINs has developed into a large and growing problem. And EPA's efforts to address the problem so far appear ineffective, and in some respects have harmed the renewable fuels marketplace.

Since the Committee's February 3, 2012, letter and EPA's February 23, 2012, response, there have been further troubling developments which have intensified the Committee's concerns. For example, the number of biodiesel RINs that EPA has now publicly identified as invalid has increased from approximately 80 million to nearly 140 million,¹ with credible sources indicating to Committee investigators that the number could double in the coming months. However, it does not appear that the EPA has taken any steps to actually solve the problem.

¹ See EPA's April 30, 2012, announcement concerning invalid RINs produced by Green Diesel, LLC.

EPA has informed the Committee that it has no plans to modify or forego its requirement that forces companies that purchased invalid RINs in good faith to also purchase valid replacement RINs. Yet these re-purchases must take place through an EPA-administered system in which EPA professes no responsibility for ensuring what are and what are not valid RINs – thereby escalating uncertainty in the market place. This uncertainty is particularly devastating to smaller producers and market participants, as the “obligated parties” who must purchase the RINs back away from all but the largest and most well-known producers. This, in turn, has drastically distorted pricing in the RIN marketplace, making RINs more expensive and driving up costs for the obligated parties.

We write today to request additional information relating to EPA’s handling of RIN fraud in the RFS program. Accordingly, and pursuant to Rules X and XI of the U.S. House of Representatives, please provide the requested documents and written responses to the following questions by June 7, 2012. We ask that you follow the instructions for responding to the Committee’s document requests, included as an attachment to this letter.

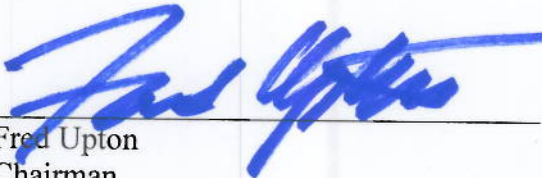
1. Please provide a detailed chronology of EPA’s actions with regard to Green Diesel, including a description of the Agency’s communication of these actions to the regulated community, including, but not limited to, (i) when and how EPA first learned that Green Diesel’s RINs may be invalid, and (ii) when and how the Agency first notified the purchasers that the Agency believed that the Green Diesel RINs were invalid.
 - a. Did EPA know of the potential invalidity of the Green Diesel RINs prior to the April 20, 2012, settlement agreement with 31 companies?
 - b. If so, why did EPA wait to issue a Notice of Violation (NOV) against Green Diesel until 10 days after announcing the settlement agreements with respect to the invalid RINs identified from Clean Green and Absolute Fuels?
2. Please provide any registration and/or re-registration applications and accompanying materials submitted by Green Diesel, Absolute Fuels, or Clean Green and any related companies. Please describe EPA’s review and approval process of any such applications.
 - a. Were engineering reviews and site visits by independent third parties conducted, as required by 40 C.F.R. § 80.1450, before the Agency approved registration applications for any of these companies?
 - b. Please provide all documents that were submitted to EPA to satisfy these regulatory requirements and all documents relating to such reviews and visits.
 - c. Did these companies submit any attestation reports, pursuant to 40 C.F.R. § 80.1464, for the years 2010 and 2011? Please provide all such reports.
3. Under the EPA Moderated Transaction System (EMTS), it is possible for participants to block transactions with certain RIN producers within the system from which they choose not to purchase RINs. Please provide any registration and/or re-registration applications,

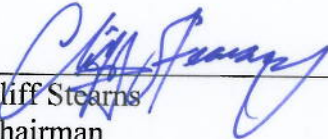
- including all documents submitted to EPA as part of these applications, for the ten most-frequently blocked registrants on EMTS as of the date of this letter. For each registrant, please describe EPA's application review and approval process.
4. The Committee has been informed that there may be additional fraudulent RINs currently in the marketplace. Please describe EPA's plan for managing and investigating the possibility of additional invalid RINs within the RFS program.
 - a. Are there presently participants in the RFS program under investigation for invalid, fraudulent, or otherwise improper RINs, regardless of whether the investigation is preliminary, partial or complete?
 - b. If so, how many?
 - c. When does EPA expect to complete any pending investigations of companies participating in the RFS program? When does EPA expect to fully inform impacted parties and the regulated community of its findings?
 5. What regulatory approaches would the Agency be able to implement so that an obligated party operating in good faith can avoid penalties and/or NOVs under the RFS program as a result of using fraudulently generated RINs? Is a regulatory change necessary? Why or why not?
 6. Was EPA statutorily obligated to impose strict liability for RIN compliance or is this a product of EPA's policy choice(s)?
 - a. Provide all documents relating to EPA's decision to impose strict liability for RIN compliance.
 7. How, if at all, does EPA believe that the "buyer beware" approach helps to ensure reliability of the RINs purchased in the renewable fuels marketplace in the instance of fuel that is produced but is perhaps off-specification?
 - a. If a RIN purchaser buys RINs from a broker, how can that purchaser obtain the necessary due diligence information regarding the fuel supplier?
 - b. The RFS program allows separation of RINs from the gallon of biofuel. As a consequence, might a RIN purchaser that exercises due diligence be unable to discern whether a RIN was properly generated and appropriately coded in EMTS?
 8. In EPA's February 23, 2012, response to the Committee, the Agency invoked low-sulfur fuels as an example of industry participants engaging in due diligence to ensure that the sulfur tolerances of each batch are met. But physical fuel can be inspected and tested by each buyer, while separated RINs cannot. Given that RINs are essentially a currency created under the supervision of EPA, is there an additional obligation on the part of the Agency to ensure validity of the RINs?

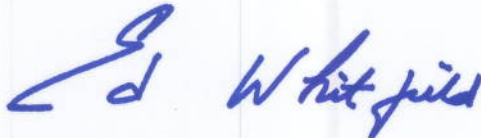
9. Why has EPA moved forward with enforcement actions against good faith purchasers?
Does EPA make any distinction between good faith and bad faith purchasers?
- a. Under what circumstances would EPA decide *not* to bring an enforcement action?
- b. On what basis will EPA decide to bring or not bring an enforcement action against a purchaser in the future?


We appreciate your prompt attention to this request. Should you have any questions, you may contact Peter Spencer or Sam Spector of the Majority Committee staff at (202) 225-2927.

Sincerely,


Fred Upton
Chairman


Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations


Ed Whitfield
Chairman
Subcommittee on Energy and Power


Michael C. Burgess
Vice Chairman
Subcommittee on Health

Attachment

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

The Honorable Bobby L. Rush, Ranking Member
Subcommittee on Energy and Power

RESPONDING TO COMMITTEE DOCUMENT REQUESTS

In responding to the document request, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.
4. Each document should be produced in a form that may be copied by standard copying machines.
5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.
6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.
8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
9. The Committee requests electronic documents in addition to paper productions. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should immediately consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If any document responsive to this request was, but no longer is, in your possession, custody or control, state:

- a. how the document was disposed of;
- b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
- c. the date of disposition;
- d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.

12. If any document responsive to this request cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.

13. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

14. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

15. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

16. Documents should be delivered to the Committee majority staff in Room 316 of the Ford House Office Building. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.

17. In the event that a responsive document is withheld on any basis, including a claim of privilege, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each other; and (f) any other description necessary to identify the document and to explain the basis

for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.

18. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request, and (3) all documents identified during the search that are responsive have been produced to the Committee, identified in a privilege log provided to the Committee, as described in (17) above, or identified as provided in (10), (11) or (12) above.

DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.

4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

7. The terms "you" or "your" mean and refers to

For government recipients:

"You" or "your" means and refers to you as a natural person and the United States and any of its agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on your behalf or under your control or direction; and includes any other person(s) defined in the document request letter.